



NICUSA, Inc.
A Subsidiary of NIC Inc.

25501 West Valley Parkway
Suite 300
Olathe, Kansas 66061

913.498.3468 office
877.234.3468 toll-free
913.498.3472 fax
www.egov.com

March 16, 2016

Via Electronic Delivery

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

**RE: CG Docket No. 02-278
Petition for Declaratory Ruling of Broadnet Teleservices LLC**

Dear Ms. Dortch:

NIC Inc. (“NIC”) encourages the Federal Communications Commission (“Commission” or “FCC”) to grant the pending Broadnet Teleservices LLC (“Broadnet”) Petition for Declaratory Ruling in this proceeding.¹ Specifically, the Commission should confirm that the Telephone Consumer Protection Act (“TCPA”) and the Commission’s TCPA rules “do not apply to calls made by or on behalf of federal, state, and local governments.”² As explained below, this conclusion is consistent with the plain language of the TCPA, Congress’s intent, and the Supreme Court’s recent *Gomez* decision. Meanwhile, granting the relief Broadnet requests would help ensure that eGovernment services are not impeded by abusive TCPA litigation.

I. Background

NIC is the nation’s largest provider of eGovernment services.³ Our government partners include 27 states and numerous federal and state agencies.⁴ Our mission is to help make government more accessible and efficient.⁵

¹ Broadnet Teleservices LLC, Petition for Declaratory Ruling, CG Docket No. 02-278 (filed Sept. 16, 2015) (“Broadnet Petition”).

² *Id.* at 1. We also support a grant of the pending RTI International, Inc. (“RTI”) Petition for Expedited Declaratory Ruling, which asks the FCC to confirm that the TCPA “does not restrict research survey calls made by or on behalf of the federal government.” See RTI International, Inc., Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, at 8-9 (filed Sept. 29, 2014) (“RTI Petition”).

³ See, e.g., NIC, *What We Do*, <http://www.egov.com/what-we-do> (last visited Feb. 10, 2016).

⁴ See, e.g., NIC, *Who We Serve*, <http://www.egov.com/who-we-serve> (last visited Feb. 10, 2016); NIC, *NIC Federal*, <http://www.egov.com/NICFederal> (last visited Feb. 10, 2016).

⁵ See, e.g., NIC, *NIC State*, <http://www.egov.com/home> (last visited Feb. 10, 2016).

We help these partners with thousands of eGovernment services.⁶ For example, we have built more than 250 user-friendly services that simplify how citizens and businesses interact with division of motor vehicle (“DMV”) offices.⁷ We also design, build and operate customized services for resources and recreation agencies across the nation that make outdoor licenses (e.g., hunting and fishing permits) accessible online.⁸ We assisted Arkansas in developing its 2015 “Best of the Web” award-winning portal, Arkansas.gov, which includes more than 100 mobile-optimized state agency sites, apps, and services.⁹ We also help New Jersey’s Division of Revenue and Enterprise Services offer CorpWatch, a notification service that allows New Jersey business owners to monitor changes and amendments to their business filings via e-mail or text alerts.¹⁰ In total, NIC operates over 7,000 eGovernment services for our state, local and federal partner agencies.

Most of our eGovernment services are provided at no direct charge to our government partners or to the citizens and businesses that use the services. For example, we operate (and developed) a notification system for West Virginia’s Department of Health and Human Resources that allows child support recipients and contributors to receive, at no charge, text notifications of payment and deposit.¹¹ This free service provides a valuable tool to single mothers and others who rely on child support payments. We are proud to offer the service, and we believe that it is appreciated by West Virginia citizens.

NIC is concerned about the purposeful increased targeting of government contractors and vendors by TCPA plaintiffs, and the greater risk of these TCPA lawsuits could force us to eliminate beneficial services offered to governments for their citizens.

II. The Commission should confirm that the TCPA’s prohibitions do not apply to calls made by federal, state, or local governments or by third-party contractors calling on their behalf.

The TCPA’s prohibitions do not apply to calls by or on behalf of government entities. The TCPA’s \$500 per call statutory damages apply only when calls are made by a “person,”¹² and the Communications Act’s definition of “person” excludes government entities.¹³ This is consistent with Congress’s goal of preventing abusive calling practices by telemarketers and other private entities calling for their own purposes. Congress never intended for the TCPA to

⁶ See, e.g., NIC, *History*, <http://www.egov.com/who-we-are/history> (last visited Feb. 10, 2016).

⁷ See, e.g., NIC, *What We Do*, <http://www.egov.com/what-we-do> (last visited Feb. 10, 2016).

⁸ *Id.*

⁹ This service was provided through our subsidiary, Arkansas Information Consortium, LLC.

¹⁰ This service is provided through our subsidiary, NICUSA – New Jersey Division.

¹¹ This service is provided through our subsidiary, West Virginia Interactive, LLC.

¹² See 47 U.S.C. § 227(b)(1).

¹³ See *id.* § 153(39).

be used to hinder taxpayer-funded government communications and research.¹⁴ Also, as others have pointed out, the Supreme Court has consistently held that the term “person” does not include the sovereign,¹⁵ and statutes containing that term are ordinarily construed to exclude government entities.¹⁶

Meanwhile, the petitions for declaratory ruling filed by Broadnet, RTI International, Inc. (“RTI”) and the National Employment Network Association (“NENA”) demonstrate that Commission action is needed to avoid chilling important government-to-citizen communications and government research.¹⁷ They also, along with the comments submitted into the record of this proceeding, demonstrate that there is broad support for confirming that the TCPA’s prohibitions do not apply to calls made by government entities or by third-party contractors calling on their behalf.¹⁸ As Congressman Latta explained to the Commission, “the TCPA was enacted to safeguard consumers from harmful and unwarranted calls, not to obstruct government communications with citizens.”¹⁹

III. Granting Broadnet’s petition would be consistent with the Supreme Court’s recent *Gomez* decision.

On January 20, 2016, the Supreme Court confirmed in *Campbell-Ewald Co. v. Gomez* that the federal government and its agencies “are not subject to the TCPA’s prohibitions.”²⁰ In addition, under *Gomez*, a government contractor that “performs as directed” has immunity, while a contractor that “violates both federal law and the Government’s explicit instructions” does not.²¹ Thus, as Broadnet observed, the Supreme Court’s decision demonstrates that “the TCPA does not apply to those working on behalf of government entities as long as they act consistently with the government entities’ instructions.”²²

¹⁴ See, e.g., 137 Cong. Rec. 89840-02 (daily ed. July 11, 1991) (statement of Sen. Hollings); see also RTI Petition at 8-9.

¹⁵ See, e.g., *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 64 (1989); *Wilson v. Omaha Tribe*, 442 U.S. 653, 667 (1979); Broadnet Petition at 5-7; RTI Petition at 5-8.

¹⁶ See, e.g., *Vermont Agency of Natural Res. v. U.S. ex rel. Stevens*, 529 U.S. 765 (2000); *United States v. Bonanno Organized Crime Family*, 879 F.2d 20 (2d Cir. 1989); RTI International, Inc., Reply Comments, CG Docket No. 02-278, at 6-7 (filed Jan. 12, 2015).

¹⁷ See Broadnet Petition; RTI Petition; National Employment Network Association, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed Aug. 19, 2014).

¹⁸ See *id.*; see also, e.g., Child Support Directors Association of California, Comments, CG Docket No. 02-278 (filed Nov. 13, 2015); American Power Association, Comments, CG Docket No. 02-278 (filed Oct. 28, 2015).

¹⁹ See, e.g., Letter from Robert E. Latta, Congressman, U.S. House of Representatives, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed July 8, 2015).

²⁰ See *Campbell-Ewald Co. v. Gomez*, No. 14-7, slip op. at 12 (rel. Jan. 20, 2016).

²¹ See *id.* at 2, 12.

²² See Letter from Joshua M. Bercu *et al.*, Counsel, Broadnet, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed Jan. 29, 2016).

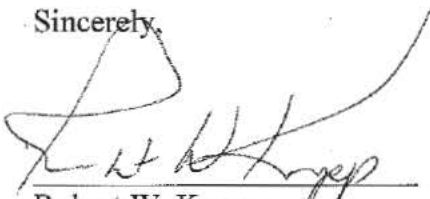
Regardless of whether there is common law immunity generally for all acts performed under contract with the government, there should be no statutory liability under the TCPA specifically when contractors place calls on behalf of a government entity and act consistent with the government's instructions. As explained above, government entities are not bound by the TCPA's prohibitions because they are not "persons" under the statute. Plus, the Commission has consistently found that third parties calling on behalf of others that are excluded from the TCPA's restrictions are also excluded,²³ and that calls placed on behalf of an entity are treated as if the entity itself placed them.²⁴

IV. Conclusion

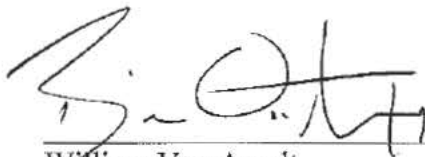
Despite the plain language of the TCPA, Congress's intent, and the Supreme Court's recent *Gomez* decision, plaintiffs continue to target government contractors. The Commission should prevent further harm to government programs and grant the Broadnet petition. Otherwise, abusive litigation under the TCPA will threaten the ability of contractors to offer important, often free, communications that help make governments and their services more accessible and efficient for all.

If you have questions or could use additional information, please contact us directly at (913) 754-7008 or wvanasselt@egov.com.

Sincerely,



Robert W. Knapp
Chief Operating Officer



William Van Asselt
General Counsel

²³ See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Memorandum Opinion and Order, 10 FCC Rcd 12391 ¶¶ 12-13 (1995) (concluding that the statutory exemption from the term "telephone solicitation" for calls and messages "by a tax-exempt nonprofit organization" should include calls and messages by or on behalf of tax-exempt nonprofit organizations); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991: Request of State Farm Mutual Automobile Insurance Company for Clarification and Declaratory Ruling*, Declaratory Ruling, 20 FCC Rcd 13664 (2005) (recognizing that the established business relationship exemption, which was applicable to State Farm, also extended to State Farm's "independent contractor insurance agents").

²⁴ See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act*, Memorandum Opinion and Order, 10 FCC Rcd 12391 ¶¶ 12-13 (1996) ("Calls placed by an agent of the [principal] are treated as if the [principal] itself placed the call."); *Joint Petition Filed by Dish Network, LLC et al.*, Declaratory Ruling, 28 FCC Rcd 6574 ¶ 31 n.94 (2013) (noting that the Commission has, on multiple occasions, equated calls "on behalf of" a party and calls placed by an "agent").